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COMMITTEE AGAINST TORTURE

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION

Initial reports of States parties due in 1992

Addendum

VENEZUELA

[8 July 1998]

CONTENTS

	Paragraphs	Page
Introduction	1 - 10	2
Article 2	11 - 34	3
Article 3	35 - 41	8
Article 4	42 - 45	9
Article 5	46 - 48	10
Article 6	49 - 53	10
Article 7	54 - 57	11
Article 8	58 - 60	12
Article 9	61 - 63	13
Article 10	64 - 75	14
Article 11	76 - 81	16
Article 12	82 - 85	18
Article 13	86 - 91	18
Article 14	92 - 96	19
Article 15	97 - 102	20
Article 16	103 - 124	22

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Introduction

1. Venezuela, as a State party to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, hereby submits for consideration by the Committee against Torture its initial report on the measures taken to give effect to its undertakings under the Convention, in accordance with article 19 of the Convention.

2. Civil and political rights in general, which naturally include the right not to be tortured and the right to physical and moral security, are recognized by the Venezuelan State in respect of all inhabitants of the territory of the Republic, without discrimination of any kind. The Constitution establishes fundamental rights and freedoms and states that they apply "to all who live in the Republic", thereby incorporating the basic principles of non-discrimination and the universality of rights.

3. The Convention against Torture, like other international human rights instruments, has been incorporated into current domestic legislation by virtue of its adoption by Congress as an Act of the Republic and due ratification. Thus the rights it embodies are considered "self-executing" and may be invoked before the judicial and administrative authorities, who can and must apply such instruments even though a given domestic Act might not expand on their principles.

4. It is recognized in Venezuela's Constitution, legislation and case law that international human rights standards constitute a body of minimum guarantees that may in no way, be restricted or reduced on the grounds that they are not recognized or are only partially recognized by a given instrument or Act.

5. A further basic principle is that the purpose of human rights law is to protect, and that its scope should always be interpreted in the light of the principles of pro homine and pro libertate. In this regard, article 50 of the Constitution gives a pro homine interpretation in the following terms: "The enunciation of rights and guarantees contained in this Constitution shall not be construed as a denial of others which, being inherent in the human person, are not expressly mentioned herein." This provision is interpreted as meaning that "all the other rights inherent in the human person", that is to say, including those contained in the international human rights instruments ratified by Venezuela, have constitutional rank.

6. The human rights enshrined in the Constitution and those "inherent in the human person" are protected by various guarantees contained in the Constitution itself: first, the guarantee of law, that is to say, its content can only be modified by a legally valid act of the national legislature; second, the guarantee of the invalidity of acts that reduce the rights established in the Constitution; third, the guarantee of the criminal, civil, administrative and disciplinary responsibility of officials who violate constitutional rights; and lastly, the guarantee of judicial protection through the remedy of amparo.

7. Institutions for the promotion and defence of human rights, of various kinds, origins, aims and scope, have been established in Venezuela. In

addition to non-governmental organizations (NGOs) - some of them international in their scope and activities, others dealing with purely domestic matters, a number of groups, foundations, university chairs, regional commissions and official institutions (independent or otherwise) have also been set up. All these organizations and programmes enjoy freedom of action and the respect and consideration of the State and the Government.

8. Venezuela maintains close contact and cooperation with the international human rights monitoring and protection bodies in meeting its obligations to prevent torture and punish it as a crime. Mr. Nigel S. Rodley, the Special Rapporteur on torture (Commission on Human Rights), visited Venezuela from 7 to 16 June 1996, and was able, as he put it in his report, "to meet his overall objective of gathering first-hand oral and written information from a wide number of persons to enable him to make a better assessment of the situation as regards the use of torture" (E/CN.4/1997/7/Add.3, para. 1).

9. During his visit, the Special Rapporteur was given extensive cooperation in carrying out his task. He met with the highest authorities in the country, the Attorney-General and other officials of the Attorney-General's Office, the President of the Supreme Court of Justice, the President and Vice-President of the Judicature Council, the Director of Prisons, the President and members of the Sub-Commission on Human Rights and Constitutional Guarantees of the Chamber of Deputies, the Director-General of the Investigation Unit of the Judicial Police, the Director of the Institute of Forensic Medicine, the Director-General of the Metropolitan Police, the Director-General of Intelligence and Prevention Services, and the Commander-in-Chief of the National Guard. He also met with persons claiming to have been tortured and/or their relatives and with representatives of NGOs. And he visited cities in the provinces, prisons, etc.

10. After his visit, the Special Rapporteur produced a report and made a number of recommendations. When the Government of Venezuela received the report and the Special Rapporteur's recommendations, it began to take the necessary measures to put them into effect. A copy of Venezuela's response to the Special Rapporteur's recommendations, giving details of the measures taken by the State to prevent and punish torture, is attached (annex 1)*.

Article 2

Paragraph 1

11. Venezuela has taken various legislative, administrative and judicial measures to prevent the use of torture.

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* The annexes are available for consultation in the files of the secretariat.

Legislative measures

12. According to article 60, paragraph 3, of the Constitution, "No one may be held incommunicado or subjected to torture or to other procedures which cause physical or moral suffering ... inflicted on a person subjected to restriction of his liberty".

13. According to article 6, paragraph 2 of the Prison Regime Act, "Prisoners shall not be subjected to any kind of degrading or humiliating treatment or to correctional measures other than those permitted under the law".

14. According to article 10 of the Code of Penal Procedure "During criminal proceedings, all persons shall be treated with due respect for their inherent dignity as human beings and for the rights deriving therefrom, and may demand of the authority requiring them to attend the right to be accompanied by a lawyer of their choosing". Article 122, which lists the rights of the accused, establishes in paragraph 10 the right "Not to be subjected to torture or other cruel or inhuman treatment or treatment degrading to his personal dignity" and, in paragraph 11, the right "Not to be subjected to techniques or methods that affect his free will, even with his consent" (annex 2).

15. Although the Penal Code does not clearly define the offence of torture, it does stipulate the following penalties in article 182: "Any public official who, while responsible for the custody or transfer of any detained or convicted person, commits arbitrary acts against that person or subjects him to acts not authorized under the relevant regulations shall be liable to between 15 days' and 20 months' imprisonment. The same penalty shall apply to any public official who, having authority over such a person by virtue of his office, commits any such acts against him". Article 182 also recognizes as an offence, punishable by a sentence of three to six years, the infliction of any suffering, offences against human dignity, harassment, torture or physical or moral attacks on a detained person by his jailers or warders or by anyone ordering such acts, in violation of the individual rights recognized in article 60, paragraph 3, of the Constitution. Further, according to article 183, if in such cases the public official acted in pursuit of his own private interest, the penalty shall be increased by one sixth.

16. Also in the context of legislative measures, we would recall that Venezuela is a State party to: the International Covenant on Civil and Political Rights, which prohibits torture under article 7; the American Convention on Human Rights, which prohibits torture under article 5; the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; and the Inter-American Convention to Prevent and Punish Torture. The international human rights treaties ratified by Venezuela, as mentioned above, form part of current substantive law and the rights they embody have been incorporated into domestic law with constitutional rank.

17. As can be seen from the various extracts from legal provisions, Venezuelan domestic law makes no distinction between torture and inhuman or degrading treatment, but simply sets the penalties to which public officials are liable for the generic offence of "arbitrary acts" or "acts not authorized under the relevant regulations" committed against persons in their care. In this respect, Venezuelan legislation is in line with paragraph 4 of general

comment No. 20, on article 7 of the International Covenant on Civil and Political Rights, adopted by the Human Rights Committee in 1992, and with article 16 of the Convention against Torture, as will be explained in greater detail in the section of this report dealing with the latter article.

Administrative measures

18. By Presidential Decree No. 3179 of 7 October 1993, the Government of Venezuela issued the Regulations on the Coordination of Police Services and on Standards of Conduct for Members of the Police Forces. These explicitly incorporate into domestic law both the Code of Conduct for Law Enforcement Officials (adopted by the General Assembly in resolution 34/169 of 17 December 1979) and the provisions of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment directly relevant to police functions.

19. According to article 24 of this Decree, "No law enforcement official may inflict, instigate or tolerate any act of torture or other cruel, inhuman or degrading treatment or punishment, nor invoke superior orders or exceptional circumstances such as a state of war or a threat of war, a state of emergency, riot or internal conflict, the suspension or restriction of constitutional guarantees, a threat to national security, internal political instability or any other public emergency as a justification of such acts." The same terms are used in article 64 of the General Rules of Procedure of the Metropolitan Police.

20. Article 114 of the Code of Penal Procedure sets forth the rules for police action and states in paragraph 3 that police officers may not "inflict, instigate or tolerate any act of torture or other cruel, inhuman or degrading treatment or punishment, either at the time of arrest or during the period of detention".

21. The whole of chapter VIII of the Prison Regime Act is devoted to regulations governing the disciplinary regime that may be applied in prison establishments, and begins by stipulating, in article 51, that "the authority to administer discipline is the sole prerogative of prison service staff". This provision should be interpreted as meaning that discipline may not be administered either by other prisoners (as the "head prisoner" used to do in the past) or by external military guards.

22. According to article 53 of the Act, the disciplinary measures that may be applied are: private reprimand; total or partial loss of acquired statutory benefits, privileges and awards; up to 30 days' confinement to the cell; up to 15 days' solitary confinement but not completely incommunicado; placement in a more rigorous treatment group; or transfer to another establishment.

23. Coercive measures (i.e. force) may be used in prison establishments only in the following circumstances, as specified in article 57 of the Prison Regime Act: (a) the attitude or conduct of an individual prisoner or groups of prisoners constitutes an imminent risk of serious injury to persons or

serious damage to property; (b) all other means of controlling the prisoner or prisoners have been exhausted; and (c) on explicit orders from the official in charge of the establishment authorizing the use of such methods.

24. According to article 3 of the Rules for Detention Centres (Internados Judiciales), "no disciplinary measure shall take the form of maltreatment by word or deed or of other measures or acts offensive to personal dignity".

25. Another aspect of the administrative measures taken in this area is the State's responsibility for guaranteeing that these rights are respected equally by all groups and individuals acting under its jurisdiction. Thus the rights established in the Covenant must be respected not only by the State or its agents, but also by private individuals. Venezuelan law therefore provides for appropriate penalties in cases where groups or individuals undertake activities or commit acts leading to the violation of any of these rights.

26. A second point here is that, with regard to human rights in general, and torture in particular, the State has an obligation not only to respect these rights and punish those who violate them, but also to prevent violations, that is to say, to take positive steps to forestall them. As the Inter-American Court of Human Rights has stated (Velásquez Rodríguez case, para. 172): "An illegal act which violates human rights and which is initially not directly imputable to a State (for example, because it is the act of a private person or because the person responsible has not been identified) can lead to international responsibility of the State, not because of the act itself, but because of the lack of due diligence to prevent the violation ..." (this relates, among other things, to the extent to which the State tolerates the existence of paramilitary groups or paramilitaries who use torture, for example). The Court also states: "The State has a legal duty to take reasonable steps to prevent human rights violations ..." (ibid., para. 174). Paragraph 175 states: "This duty to prevent includes all those means of a legal, political, administrative and cultural nature that promote the protection of human rights and ensure that any violations are considered and treated as illegal acts, which, as such, may lead to the punishment of those responsible ...". This report will describe the positive steps the State has taken to prevent the offence of torture.

Legal measures

27. Since, under the new rules of penal procedure, which will regulate judicial proceedings when the Code of Penal Procedure comes into force, trials will have to be conducted orally, i.e. the accused's statement will have to be made to the public prosecutor or judge and not to the police. Torture will thus lose any importance it may hitherto have had as a means of obtaining evidence or extracting confessions. The Code also stipulates that, in all cases, a statement will be void if it is not made in the presence of the accused's attorney (art. 127).

28. Article 214 of the Code of Penal Procedure, which requires that evidence shall be lawful, states that "no use may be made of any information obtained

through torture, ill-treatment, coercion, threats or deceit ... or by any other means that impairs an individual's will or violates his fundamental rights ...".

29. Under article 479 of the new Code of Penal Procedure, the court of execution shall ensure the correct application of prison regulations. The measures used to do so shall include regular inspections of prison establishments, as often as necessary. The court may call prisoners to appear before it for purposes of supervision and control. The magistrate may be accompanied on prison visits by representatives of the Public Prosecutor's Office (art. 480). The court of execution will thus have the power to correct and prevent abuses against prisoners by prison officers or guards, which will also make it easier to ensure due respect for human dignity.

Paragraph 2

30. In Venezuela, the prohibition of torture is absolute, i.e. there is no lawful possibility or circumstance that might permit, justify or legitimize torture. Torture is absolutely prohibited both under the international instruments to which Venezuela is party and under its own domestic law.

31. The guarantee given in article 60, paragraph 3, of the Constitution is one that cannot be restricted or suspended, even in situations of emergency, during disturbances that might threaten the peace of the Republic, or in serious circumstances affecting economic and social activity. This is explicitly stipulated in article 241 of the Constitution. This constitutional provision is in line with the provisions of article 4, paragraph 2, of the International Covenant on Civil and Political Rights and article 27, paragraph 2, of the American Convention on Human Rights, to both of which Venezuela is a party. The prohibition of torture is thus absolute in Venezuela. No circumstances, however serious, authorize the suspension or restriction of that prohibition. Venezuelan law in this regard follows paragraph 3 of Human Rights Committee general comment No. 20 on article 7 of the International Covenant on Civil and Political Rights.

Paragraph 3

32. Due obedience is no excuse for the offence of torture. This is explicit in the general rule contained in article 46 of the Constitution, which states that "Every act of the Public Power which violates or impairs the rights guaranteed by this Constitution is void and the public officials and employees who order or execute it shall be held criminally, civilly or administratively liable, as the case may be, and orders of superiors manifestly contrary to the Constitution and the laws may not serve as an excuse". Under this provision of the Constitution, if torture has been ordered by a superior, the responsibility lies both with the person issuing the order and with the person who executes it.

33. However, there are two legal provisions that run counter to article 46 of the Constitution. They are:

(a) Article 65, paragraph 2, of the Penal Code, which states that "anyone acting out of legitimate and due obedience" shall not be liable to

punishment. "In such a case, if the action carried out constitutes an offence or violation, the appropriate penalty shall be imposed on the person giving the illegal order." This provision clearly contradicts the constitutional rule making the person issuing the order equally liable with the person executing it;

(b) Article 22 of the Armed Forces (Organization) Act states that, "if an order is abusive, a subordinate is entitled, after obeying it, to complain to the immediate superior of the person who issued the order". Since the armed forces may in certain circumstances act as forces of law and order or be mobilized in emergencies, the existence of this provision in the (Organization) Act is a matter of interpretation of domestic law that needs to be resolved.

Neither of these legal provisions is of practical value, since they are contrary to the spirit and letter of the Constitution.

34. As already mentioned, under article 24 of Presidential Decree No. 3179 of 7 October 1993, "no law enforcement official may inflict, instigate or tolerate any act of torture or other cruel, inhuman or degrading treatment or punishment, nor invoke superior orders ... as a justification of such acts".

Article 3

35. In granting extraditions, Venezuela has complied with the procedures established in the relevant laws and treaties and respected all relevant guarantees. Extradition in Venezuela falls under the jurisdiction and responsibility of the executive and the judiciary, and also of the Public Prosecutor's Office.

36. Within the executive, the Ministry of Foreign Affairs is responsible for the "international processing of extradition requests, letters rogatory, rogatory commissions and requests for the execution of court decisions and judgements" (Central Administration (Organization) Act, art. 25, para. 16) while the Ministry of Justice deals with "the administrative processing of extradition requests, letters rogatory, rogatory commissions and requests for the execution of court decisions and judgements, without prejudice to the international processing which such requests require" (ibid., art. 35, para. 3).

37. The Supreme Court of Justice is competent to "state whether or not it is appropriate to request or grant extradition in cases that are covered by public treaties or authorized under the law" (Supreme Court of Justice (Organization) Act, art. 42, para. 30). This power is vested in the Criminal Cassation Division (ibid., art. 43).

38. The Public Prosecutor's Office is competent to "act ... in proceedings relating to execution of the decisions of foreign authorities, in extradition proceedings, and when a specific Act provides for its intervention".

39. The procedure for extradition is set forth in detail in articles 389 to 393 of the Code of Criminal Procedure, which will remain in force until 1 July 1999. In the new Code of Penal Procedure due to enter into force on 1 July 1999, the procedure is set forth in articles 394 to 402.

40. Under current legal provisions, Venezuela cannot expel, return or extradite a person who is in danger of being subjected to torture in the requesting State. As well as being a party to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Venezuela is also a party to the Inter-American Convention to Prevent and Punish Torture. Since international human rights standards are self-executing, the rights established in both conventions are part of the substantive legislation in force in Venezuela.

41. In every case, before taking a decision on extradition the court must give a hearing to the detainee, who may claim, and should naturally provide evidence, that torture is practised in the requesting country or State or that human rights in general are violated. In such situations, all information on human rights is valid, whether provided by international organizations or by reputable and credible NGOs.

Article 4

42. Although Venezuelan criminal law does not recognize any offence of "torture", it does recognize that some situations constitute acts of torture, in the terms in which the offence is defined and characterized in article 1 of the Convention.

43. Article 176 of the Penal Code provides for imprisonment for "anyone who, without authority or right, uses threats, violence or other unlawful coercion to compel a person to carry out or tolerate an act he is not obliged to perform by law or prevents him from performing an act that is not prohibited by law ... If such coercion also involves an abuse of public authority or is exercised against a family member or partner or against a public official in connection with his duties, or if it leads to serious harm to the person, health or property of the victim ...", the penalty is increased.

44. Under article 182 of the Penal Code, a prison sentence of between 15 days and 20 months may be imposed on "any public official who, while responsible for the custody or transfer of any detained or convicted person, commits arbitrary acts against that person or subjects him to acts not authorized under the relevant regulations ... The same penalty shall apply to any public official who, having authority over such a person by virtue of his office, commits any such acts against him". Under the same article, a prison sentence of between three and six years may be imposed if any "suffering, offences against human dignity, harassment, torture or physical or moral attacks are inflicted on a detained person by his guards or warders or by anyone ordering such acts, in violation of the individual rights recognized in article 60, paragraph 3, of the Constitution".

45. Attempted torture is also punishable, under article 80 of the Penal Code. Moreover, acquiescence and complicity are defined as offences and are

punishable under articles 83 to 85 of the Code. Attempted torture and acquiescence or complicity in torture are thus punishable under Venezuelan law.

Article 5

46. The Venezuelan State has clearly established its jurisdiction over the offences referred to in article 5 of the Convention.

47. According to article 4 of the Penal Code, persons liable to trial in Venezuela and punishable under Venezuelan criminal law include:

> "1. Venezuelans who, while in a foreign country ... commit acts punishable by law" (the offence of torture being, naturally, one of those acts punishable under the law);
>
> "2. Foreign nationals or citizens who, while in a foreign country, commit an offence against ... a Venezuelan national" (this would include cases where foreigners commit the offence of torture against Venezuelans).

48. Since, under article 6 of the Penal Code, "the extradition of a Venezuelan may not be granted under any circumstances", in the event that a Venezuelan national committed the offence of torture in a foreign country, he "should be tried in Venezuela, at the request of either the victim or the Public Prosecutor's Office".

Article 6

49. As regards detention with a view to extradition of a person suspected of the offence of torture, the Venezuelan State is guided by the legal provisions referred to in the Constitution, by the Inter-American Convention on Extradition to which Venezuela is a party, and by the Code of Criminal Procedure currently in force.

50. Under article 60, paragraph 1, of the Constitution:

> "No one may be arrested or detained, unless caught <u>in flagrante</u>, except by virtue of a written warrant of an official authorized to order his detention, in the cases and with the formalities prescribed by law. The pre-trial proceedings may not be prolonged beyond the legal time limit."
>
> "The accused shall have access to pre-trial safeguards and to all means of defence prescribed by the law as soon as the corresponding detention order is issued."
>
> "In the event that a punishable act has been committed, the police authorities may adopt provisional measures of necessity or urgency, indispensable to ensure investigation of the act and trial of the defendants. The law shall fix a brief and peremptory time limit by which the judicial authorities must be notified of such measures, and

shall also establish the period within which the latter shall rule on them, it being understood that they have been revoked are without effect unless confirmed within that period."

51. Under article 60, paragraph 2, of the Constitution,

"No one may be deprived of his liberty for obligations whose non-observance has not been defined by law as a crime or misdemeanour."

52. Articles 75 and 75-H of the Code of Criminal Procedure establish the powers of the Judicial Police as an auxiliary body of the judicial authorities, and regulate the procedure to be followed when detention has been carried out proprio motu, on the basis of a complaint or by order of the competent authorities.

53. According to article 14 of the Inter-American Convention on Extradition:

"1. In urgent cases, a State party may request by the means of communication provided for in Article 10 of this Convention (through the diplomatic agent of the requesting State, or its consular officer, or the diplomatic agent of a third State, or directly from Government to Government), or any other such means, the detention of the person who is judicially required for prosecution, is being tried, has been convicted, or has been sentenced to a penalty involving deprivation of liberty, and may also request the seizure of the objects related to the offense. The request for provisional detention shall contain a statement of intention to present the formal request for the extradition of the person sought, a statement of the existence of a warrant of arrest or of a judgment of conviction against that person issued by a judicial authority, and a description of the offense. The request for provisional detention shall be the sole responsibility of the requesting State.

"2. The requested State shall order provisional detention and, when appropriate, the seizure of objects and shall immediately inform the requesting State of the date on which provisional detention commenced.

"3. If the request for extradition, accompanied by the documents referred to in Article 11 of this Convention (i.e. the supporting documents), is not presented within sixty days of the date on which the provisional detention referred to in paragraph 1 of this article commenced, the person sought shall be set free.

"4. After the period of time referred to in the preceding paragraph has expired, the detention of the person sought may not be again requested except upon presentation of the documents required under Article 11 of this Convention."

Article 7

54. The various situations referred to in this article of the Convention are dealt with by the Constitution and in domestic legislation, and by the Inter-American Convention on Extradition, to which Venezuela is a party.

55. Article 49 of the Constitution provides for constitutional protection (amparo), which guarantees fair treatment from the very beginning of proceedings, as follows: "The courts shall protect every inhabitant of the Republic in the enjoyment and exercise of the rights and guarantees established in this Constitution, in conformity with the law. Proceedings shall be brief and summary and the competent judge shall have the power to re-establish immediately the infringed juridical situation." Due process must in all cases be observed, in accordance with the law.

56. According to article 2, paragraph 3, of the Inter-American Convention on Extradition:

> "The requested State may deny extradition when it is competent, according to its own legislation, to prosecute the person whose extradition is sought for the offense on which the request is based. If it denies extradition for this reason, the requested State shall submit the case to its competent authorities and inform the requesting State of the result."

On this basis, in the event that extradition does not take place, Venezuela will submit the case to its competent authorities for prosecution, in accordance with article 7, paragraph 1, of the Convention against Torture.

57. Another possible situation is that extradition proceedings take place but the requested State does not hand over the person in question (for example, on the grounds that he could be tortured on being handed over to the requesting State). In such cases, the requested State is obliged, under article 8 of the Inter-American Convention on Extradition, to prosecute the person for the offence with which he is charged, just as if it had been committed within its territory, and shall inform the requesting State of the judgement handed down. Venezuela fully complies with this procedure.

Article 8

58. In extradition cases, Venezuela is guided by the relevant international treaties (the Bustamante Code and the Inter-American Convention on Extradition), by extradition treaties concluded with other countries (see list below), and by the Constitution and other relevant domestic legislation.

59. Venezuela fully endorses article 2 of the Declaration on the Protection of All Persons from being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which states that torture "is an offence to human dignity and shall be condemned as a denial of the purposes of the Charter of the United Nations and as a violation of the human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights". This is a clear statement of intent to consider and classify torture as a crime which, because of its significance, characteristics and consequences, infringes the fundamental rights and values of all human beings, and not only those of the victims. As such, the offence of torture is an international offence, which should be prosecuted by all civilized States.

60. Insofar as it offends human dignity, torture harms all human beings, in the broadest of terms. To condemn it as a denial of the purposes of the

Charter of the United Nations is to identify it as a threat to the obligations undertaken and the ideals proclaimed by the peoples of virtually every State in the world, and one that runs counter, in particular, to the basic ideal and obligation to encourage respect for "human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion ...". Moreover, to condemn it as a violation of the Universal Declaration of Human Rights identifies torture as a threat to the "inherent dignity" and "the equal and inalienable rights of all members of the human family".

Article 9

61. In ratifying the Inter-American Convention on Extradition, Venezuela restated its undertaking under this article to afford the greatest measure of assistance to other States parties in connection with criminal proceedings brought in order to punish those responsible for the offence of torture, including the supply of all necessary evidence.

62. The Inter-American Convention on Extradition obliges States parties to hand over to other States parties, at their request, persons who are judicially required for prosecution, are being tried, have been convicted or have been given a custodial sentence. Venezuela was moved to approve and, later, ratify this Convention in the belief that - in the words of the third preambular paragraph - "the close ties and the cooperation that exist in the Americas call for the extension of extradition to ensure that crime does not go unpunished, and to simplify procedures and promote mutual assistance in the field of criminal law on a wider scale than provided for by the treaties in force, with due respect to the human rights embodied in the American Declaration of the Rights and Duties of Man and the Universal Declaration of Human Rights".

63. Venezuela has also signed a number of bilateral treaties on extradition, the terms of which are binding on the parties. It has signed the following extradition treaties:

Extradition treaty between Venezuela and the United States of America (1922);

Extradition agreement between Venezuela, Ecuador, Bolivia, Peru and Colombia (1911);

Extradition agreement between Venezuela and Cuba (1910);

Extradition agreement between Venezuela and Belgium (1884);

Extradition agreement between Venezuela and Brazil (1938);

Extradition agreement between Venezuela and Spain (1894);

Extradition agreement between Venezuela and Chile (1962);

Extradition agreement between Venezuela and Italy (1930);

Inter-American Convention on Extradition, or Caracas Convention (1981).

Article 10

Paragraph 1

64. With the support of foundations and NGOs, the State has developed training programmes for law enforcement officials, a category that includes all police, the National Guard, the armed forces and prison warders.

65. The Human Rights Foundation, which is a private, non-profit-making institution devoted to human rights teaching, promotion, information and research with a multidisciplinary approach, was founded in August 1992 by a group of prominent Venezuelans involved in study, research and teaching in human rights. It has developed training and information programmes at various levels, including human rights courses and workshops geared specifically to the police, armed forces and prison staff. Examples of these are workshops given by the Foundation for the Caracas Metropolitan Police, the Maracay (Aragua State) police and the Municipal Police of San Francisco in Maracaibo (Zulia State). It has also organized courses for prison warders. A special section of this information and training programme relates to the prohibition of torture.

66. Another institution that has developed programmes on the subject is the Committee of Family Members of Victims of the Unrest (COFAVIC), an NGO working for the protection and promotion of human rights in general. It has also run workshops as part of its basic programme of comprehensive human rights training for prison officials. COFAVIC has received financial cooperation to develop these programmes from accredited diplomatic missions of foreign Governments in Venezuela. Officials from various prisons have taken part.

67. The National Human Rights Commission was established by Decree No. 1034 of 24 January 1996, and is composed of representatives of various ministries and of the Public Prosecutor's Office and the Sub-Commission on Human Rights of the Chamber of Deputies Commission on Internal Policy. It also plays a part in training and information. Its constituent decree sets forth its powers and competence in the following terms: (a) to advise the executive branch on all national and international human rights issues; (b) to help the country fulfil its obligations under the international treaties and agreements it has signed; (c) to study and recommend measures it considers necessary to encourage the promotion and protection of human rights within the country; and (d) to facilitate cooperation between the executive, NGOs and the general public in all matters regarding observance and guarantees of human rights. The Commission arranges its training programmes through NGOs.

68. In order to ensure respect for the law in practice and to encourage all prison staff to have due respect for the human dignity of prisoners, the Ministry of Justice, with the assistance of the European Economic Community and NGOs, has held human rights training courses for nearly all prison staff - both administrative and custodial, particularly on the proper treatment of prisoners.

69. The Institute of Prison Studies, a department of the Ministry of Justice founded in 1990, trains senior prison officers who, on completion of their

studies, begin work as prison guards. In theoretical and practical courses, they are trained in the treatment of prisoners, in accordance with relevant domestic law and international standards.

70. The Foundation for the Comprehensive Development of the Prison System, located in Miranda State and established by that State as part of the administrative decentralization process, has also developed prison guard training programmes. Other State governments have set up programmes of the same kind.

71. An important step forward was taken with the replacement of the old General Inspectorate of Prisons, which was a department of the Prisons Board, by a National Coordinating Board for Prison Inspection and Control, a body comprising a prisoners' ombudsman, a representative of Congress, NGO representatives and a representative of the Ministry of Justice. Its basic tasks are to monitor officials' conduct and establish the legitimacy of investigations into their conduct and of disciplinary penalties imposed on officials who, in the performance of their duties, mistreat prisoners or behave irregularly in any way.

72. Problems of evidence still arise during criminal proceedings owing to a lack of resources and the forensic physicians' inability to detect when a person has been subjected to torture. This is one of the commonest limitations in such investigations.

73. Venezuela has been making efforts - albeit not completely successful as yet - to overcome these limitations. The Director-General of Human Rights of the Public Prosecutor's Office set up a national programme of workshops in 1997 to acquaint medical professionals with the latest techniques for detecting torture that leaves no visible or obvious marks, and psychological torture. However, as is well known, some of these tests require specialized equipment, which, in Venezuela, is not yet in general use.

Paragraph 2

74. By Decree No. 3179 of 7 October 1993, the Code of Conduct for Law Enforcement Officials was incorporated into the compulsory standards for such officials in Venezuela. In this Decree, the Venezuelan State explicitly stipulates that:

> "Public order and the safety of all persons and property are fundamental to the full enjoyment of citizens' rights and guarantees and to the functioning of the State, and it is the inescapable duty of the national Government to ensure their preservation and maintenance";
>
> "It shall be the task of the police and security forces in a democratic society to protect and guarantee the free exercise of the rights and freedoms of individuals; to prevent and combat any kind of crime; and to maintain internal peace, tranquillity, order and public safety, with strict respect for the human rights and fundamental freedoms of all";

"The action of the police and security forces must at all times comply with the requirements of the democratic constitutional order, as set forth in the Constitution and in the international human rights instruments that are binding on the Republic"; and

"There are various guidelines with which the conduct of members of the police and security forces must comply, since they have been recognized as universal by the United Nations and Venezuela is in a position to incorporate them into its domestic legal order as a prime component of the rule of law: for example, the Code of Conduct for Law Enforcement Officials, adopted by the United Nations General Assembly on 17 December 1979 (resolution 34/169); and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, adopted by the eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders".

75. According to article 24 of the Decree:

"No member of the police forces may inflict, instigate or tolerate any act of torture or other cruel, inhuman or degrading treatment or punishment, or invoke superior orders or exceptional circumstances such as a state of war, state of emergency, internal disturbance or conflict, the suspension or restriction of constitutional guarantees, a threat to national security, internal political instability or any other public emergency as justification for such acts.

"The term 'torture' means any act by which pain or suffering, whether physical or mental, is intentionally inflicted on a person for purposes of a criminal investigation, as a means of intimidating him, as a personal punishment, as a preventive measure or for any other purpose. 'Torture' also means the use of methods tending to suppress an individual's personality or diminish his physical or mental capacity, even without causing physical pain or mental anguish".

Article 11

76. Venezuela has established standards and instructions for the treatment to be given to detained persons and for methods of interrogation, all of which form part of an overall policy of averting any incidence of torture.

77. According to article 403 of the Code of Criminal Procedure, all prison establishments shall be inspected at least every two weeks by competent court officials who may request information of any kind concerning the treatment of prisoners. The inspections are made by judges, government procurators and ombudsmen for prisoners. Prison officers are required to offer every assistance in this kind of inspection. The purpose of these visits, as stated in article 405 of the Code, includes monitoring the treatment, assistance and food given to prisoners and detainees, and noting any complaints they may have against their warders, guards, ombudsmen or procurators.

78. Article 6 of the Public Prosecutor's Office (Organization) Act establishes the powers of the Public Prosecutor's Office, which include ensuring respect for the human and constitutional rights of persons detained

in police stations, places of detention, military detention centres, labour colonies, prisons and penitentiaries, reform schools and other detention and internment establishments; supervising inmates' and internees' conditions of detention; and taking appropriate legal steps to enforce human rights when it is established that they have been or are being impaired or violated.

79. Article 64 of Decree No. 943 of 22 November 1995 establishing the General Rules of Procedure of the Metropolitan Police, expressly and strictly prohibited all police officers from inflicting, instigating or tolerating any act of torture or cruel, inhuman or degrading treatment, or invoking superior orders or exceptional circumstances such as a state or threat of war, a state of emergency, internal disturbance or conflict, the suspension or restriction of constitutional guarantees, a threat to national security, internal political instability or any other public emergency as justification for such acts.

80. These legal provisions notwithstanding, as Mr. Nigel Rodley, the Special Rapporteur on torture, points out, torture continues to be practised both by the police and by the armed forces in areas of emergency and conflict. The Special Rapporteur was given "explanations" by senior police officers, including:

(a) "The Director of the PTJ (Criminal Investigation Department of the Judicial Police) said that its staff was insufficient for the large quantity of events of all types it had to investigate and that there were times when the officers took the easiest way of speeding up the investigation. He did say, however, that although there were abuses, these were not institution policy and were not supported by the PTJ management" (E/CN.4/1997/7/Add.3, para. 34);

(b) "The Metropolitan Police authorities said that abuses by the police have been reported more regularly in recent years and that the police encouraged citizens to lodge complaints. Police officers also know that complaints are investigated and that there is a risk of punishment, which has brought down the number of incidents of abuse" (ibid., para. 35);

(c) "The Chief of the Zulia State Police said that cases where citizens had received serious injuries at the hands of the Zulia police had occurred, but that they were being investigated. He also said that much of the problem was due to lack of proper training of police staff" (ibid., para. 37).

81. As can be seen from these extracts from the report of the Special Rapporteur on torture, quoted at random from among many other cases in the report that could have been cited, cases of torture continue to occur in Venezuela owing basically to deficiencies in the police services, rather than to any systematic policy of using torture. The authorities believe that what is important now is to prevent the offence of torture and punish the perpetrators; this is the aim of State policies in practice.

Article 12

82. A series of provisions are now in force with the aim of fulfilling Venezuela's obligation under this article.

83. Under article 66 of Decree No. 943 of 22 November 1995, establishing the General Rules of Procedure of the Metropolitan Police, "When police officers have reason to believe that any of the behaviour mentioned in article 64 of these Rules (that a police officer might inflict, instigate or tolerate any act of torture or cruel, inhuman or degrading treatment), they shall inform their superiors and, if necessary, any appropriate authority or body vested with reviewing or remedial power, so that the violation may be made good".

84. Under article 374 of the current Code of Criminal Procedure, "The government procurator is under an obligation to report to the competent tribunals any offences committed in his jurisdiction by public officials in the performance of their duties, or for reasons connected with their office, and any individual may bring charges against them".

85. Articles 292 and 293 of the new Code of Penal Procedure provide for an official investigation in the following terms:

> "Article 292. The Public Prosecutor's Office, on being apprised in any way that a publicly actionable offence (such as torture) has been committed, shall order preliminary steps to be taken to investigate it and prepare a report, including all the circumstances that might affect its characterization and the responsibility of the perpetrators and other participants, and the securing of material evidence directly and indirectly related to the offence.
>
> "Article 293. If the information is received by the police authorities, they shall communicate it to the Public Prosecutor's Office within eight hours and shall take only the necessary and urgent preliminary steps".

Article 13

86. Any person who has been subjected to torture or ill-treatment has the right to lodge a complaint, and this must be received and processed by the administrative or judicial authorities, or both. Thus the basic remedy available to the victims of torture or other inhuman treatment is a complaint to the competent authorities. The complaint may be made by the victim or by a member of his family (it is usually the latter) to the Attorney-General's Office. If the allegation is confirmed or there are reliable indications that an offence has been committed, the Attorney-General's Office refers the case to the criminal courts.

87. Since complaints of torture or ill-treatment are normally made against public officials who are members of law enforcement agencies such as the police, prison officers or interrogators, some explanations are called for concerning the limitations of these procedures within the current Code of Criminal Procedure.

88. Generally speaking, proceedings against public officials in Venezuela can only be brought, with certain exceptions, after a series of special procedures that provide guarantees or conditions of admissibility consistent with the position of a public official and the need for the dignity of the State itself to be protected and the proceedings to be impartial. The use of special procedures in trying holders of public office does not confer any privilege or immunity from the statutory penalties. Their purpose is to safeguard public office and officials by avoiding instability associated with hasty, unjustified or malicious complaints or accusations intended to disrupt the legal order. The law has therefore established that, before public officials can be tried for offences committed in the performance of their duties and by virtue of their position, certain procedures or requirements must be complied with before criminal proceedings can be brought.

89. The Code of Criminal Procedure provides, then, for a special procedure, which may be initiated by a complaint from a government procurator by a charge brought by private individuals, or proprio motu in exceptional cases as provided for by law. Certain formalities must be completed, such as preliminary examination of cause and preliminary steps to establish the actionable offence committed by the official, which constitutes what is known in law as an información de nudo hecho (an information) procedure. This procedure, which is of course meant as a safeguard against malicious complaints and proceedings against law enforcement officials, and especially the police and security officials, has frequently been a serious impediment to effective complaints against police abuses. Even official statistics show that only a small minority of complaints against police abuses are brought to a successful conclusion.

90. The procedure will undergo substantial changes with the entry into force on 1 July 1999 of the new Code of Penal Procedure, which will enable the victim or any person with knowledge of an actionable offence to lay a complaint before a government procurator or a police criminal investigation body (see Code of Penal Procedure, art. 294). The investigation will be initiated proprio motu by the Public Prosecutor's Office and will then proceed as normal.

91. Article 118 of the Code permits "any individual or human rights association" to lodge "a complaint against public officials or employees or members of the police forces who have violated human rights in the performance of their duties or in connection with them". Further, article 119 provides for special assistance in that "the person directly affected by the offence may, within a victims' protection or aid association, delegate the exercise of his rights if that is more beneficial for the defence of his interests". As these two articles show, the law confers an important role on NGOs in complaints concerning human rights violations, and particularly in cases involving torture, which, as is well known, is one of the violations that private individuals tend not to report, partly through fear of reprisals against them or their families.

Article 14

92. The new Code of Penal Procedure clearly establishes the rights of victims. It states that "protection and compensation for the damage caused to

the victim of the offence are objectives of the penal procedure", and that "the Public Prosecutor's Office has an obligation to guarantee those interests at all stages. The judiciary shall enforce the victim's rights and ensure respect, protection and compensation during the proceedings. In addition, the police and other auxiliary bodies shall treat him in a manner consistent with his status as a victim, making every effort to enable him to take part in proceedings when necessary" (Code of Penal Procedure art. 115).

93. Article 117 of the Code sets forth the rights of the victim, including the right "to request measures of protection against probable attacks on him or his family" and "to initiate civil proceedings to establish civil liability for the actionable offence". Compensation would naturally be a part of such civil proceedings.

94. In Venezuela, anyone who is criminally liable for an offence or misdemeanour is also civilly liable, the right of action in respect of acts perpetrated by public officials in the performance of their duties being time-barred after 10 years.

95. Since Venezuela is a State party to the American Convention on Human Rights, it has automatically incorporated into its legal system article 63 of the Convention which states, with reference to the competence and functions of the Inter-American Court of Human Rights: "If the Court finds that there has been a violation of a right or freedom protected by this Convention, the Court shall rule that the injured party be ensured the enjoyment of his right or freedom that was violated. It shall also rule, if appropriate, that the consequences of the measure or situation that constituted the breach of such right or freedom be remedied and that fair compensation be paid to the injured party".

96. Venezuela has no rehabilitation programmes especially designed by the State for victims of torture or ill-treatment. However, there are a number of NGOs tha document complaints of torture, and they always demand that the State should pay compensation if the alleged offences are proved.

Article 15

97. In Venezuelan law and practice, no statement that is shown to have been made as a result of torture may be submitted as evidence in any proceedings.

98. According to article 60, paragraph 4, of the Constitution, no one may be compelled to make a statement or to acknowledge guilt in a criminal trial against himself, nor against his spouse or the person with whom he cohabits, nor against his relatives within the fourth degree of consanguinity or second degree of affinity.

99. The Code of Criminal Procedure, which will remain in force until 1 July 1999 when the new Code of Penal Procedure will enter into force, provides as follows in article 247: "A confession made by the accused before the court during the pre-trial proceedings, before or after arrest, or during the trial, may be used in evidence against him under the following conditions: (1) it must have been made of his own free will and not under oath; (2) the

facts of the crime must have been fully established; and (3) in addition to the documents, there is at least some evidence or grounds for suspicion against the accused. If the documents do not contain the probative component referred to in (3) above, the confession shall have the status only of more or less important circumstantial evidence against the accused; and if neither conditions (1) nor (2) are met, the confession can have no status, even as circumstantial evidence ...".

100. In this regard, the Code of Penal Procedure, which has already been enacted but is in abeyance until 1 July 1999, provides as follows:

(a) Under article 122, which establishes the rights of the accused: "9. To be apprised of his constitutional right not to make a statement and, in the event that he consents to make a statement, his right not to make it under oath. 10. Not to be subjected to torture or other treatment of a cruel or inhuman nature or that is degrading to his personal dignity. 11. Not to be subjected to techniques or methods that distort his free will, even with his consent";

(b) Under article 214, which deals with the legality of evidence: "Evidence shall be valid only if it has been obtained by lawful means and introduced into the proceedings in accordance with the provisions of this Code". The general principle is developed further in the subparagraph to this article, as follows: "No use may be made of information obtained through torture, ill-treatment, coercion, threats, deceit, improper interference in the privacy of the home or correspondence, communications, documents and private records, or by any other means that impairs the will or violates the fundamental rights of persons. Neither shall any value be attached to information obtained directly or indirectly by unlawful means or procedures".

101. As a State party to the American Convention on Human Rights, Venezuela automatically incorporates the provisions of article 8, paragraph 3, of that Convention, which stipulates: "A confession of guilt by the accused shall be valid only if it is made without coercion of any kind".

102. In practice, despite the undoubted existence of all these legal provisions reflecting the requirements of the Convention against Torture, cases of torture during police questioning continue to come to light and to be reported. Factors contributing to this situation include: a lack of modern investigative techniques, which means that "police truth" frequently depends on confessions extracted using torture; lack of professional training for the police and for investigation units in general; extensive impunity for the offence of torture; and the relatively long period of detention in police custody before the prisoner is handed over to the relevant court. Some of these shortcomings are being rectified through programmes now under way. For example, article 259 of the new Code of Penal Procedure reduces the time-limit for a detainee to be brought before the court for a decision, from the current 8 days to 48 hours. In addition, the precautions designed to prevent and avoid torture include the freedoms and recognition granted to NGOs, which have been very active in investigating and reporting cases. Other action taken to combat this evil practice involves providing the police with professional training and courses in human rights.

Article 16

103. Venezuelan domestic law makes no distinction between torture and inhuman or degrading treatment, merely establishing penalties for public officials guilty of the generic offence of "arbitrary acts" or "acts not authorized under the relevant regulations" against persons in their care. In this respect, Venezuelan legislation is in line with article 16 of the Convention and with paragraph 4 of General Comment No. 20 on article 7 of the International Covenant on Civil and Political Rights, adopted by the Human Rights Committee in 1992.

104. Article 60, paragraph 3, of the Constitution, referring to individual rights, condemns any kind of ill-treatment, clearly stating that no one may be subjected to torture "or to other procedures which cause physical or moral suffering. Any physical or moral attack inflicted on a person subjected to restriction of his liberty is punishable".

105. Venezuelan criminal law, too, establishes penalties for any kind of ill-treatment, and not only torture as defined in the Convention. According to article 182 of the Penal Code, for example, "any suffering, offences against human dignity, harassment, torture or physical or moral attacks inflicted on a detained person, by his jailers or warders or by anyone who ordered such acts, in violation of the individual rights recognized in paragraph 3 of the Constitution, shall be liable to a prison term of three to six years".

The prison problem in Venezuela

106. In the report on his visit to Venezuela in 1996, Mr. Nigel Rodley, the Commission on Human Rights Special Rapporteur on torture, analysed the situation in prisons there and suggested that the conditions prevailing in prisons constituted in themselves cruel, inhuman and degrading treatment. It might therefore be useful to give the Committee against Torture some account, however brief, of the situation in prisons in Venezuela and the efforts being made to overcome problems.

107. Serious outbreaks of violence in prisons, resulting in deaths, injuries, kidnapping and loss or destruction of property, are an old problem in Venezuela, but their frequency has increased in recent years. There can be no doubt that such events have been precipitated in part by inadequate physical conditions in these establishments, shortcomings in the prison administration system - particularly in the health, catering and employment services - overcrowding, judicial delays, lack of adequate supervision, corruption, arms and drugs trafficking, and also abuses on the part of administrative officials and internal and external warders and guards. Particularly in recent years, with outbreaks of violence becoming increasingly common, efforts have been made to examine and eliminate their causes. Hence the prison building and improvement programme, the reforms designed to speed up trials and reduce overcrowding, the improvements in catering and health services, permanent attendance by government procurators, instruction and training for prison staff, etc.

108. Recent studies by the Ministry of Justice have found that, although the pattern of violence varies from prison to prison depending on specific circumstances, the vast majority of outbreaks result from confrontations and conflicts over the supply, control, trafficking and use of weapons and drugs.

109. Prison violence in Venezuela most commonly takes the form of battles in which one gang or group of assailants violently and by force of arms invades the area held by a rival group or gang, taking the warders by surprise or overpowering them (for their own safety and that of the inmates, such staff only very rarely carry firearms). Once inside rival territory, the attackers padlock and chain the entrance doors, shutting in as many opponents or non-partisans as possible and shutting out security staff while they lay into their victims.

110. The way the authorities and security forces react naturally depends on the scale and potential of the threat, and also on their legal and physical power of action. It is always difficult to control such emergency situations and at the same time respect human rights and avoid violence and the destruction of property and belongings. When the situation has been brought under control, there are searches, confiscations of weapons and drugs, punishment for those responsible and the ringleaders of the disturbances, and transfers to other prisons, all of which creates an atmosphere of tension that is conducive to further demands, mass protests, destruction, hunger strikes and renewed threats of violence.

111. The many preventive and security measures taken by the prison administration to deal with prison violence include the following:

(a) In order to avoid excessive injury, it has been decided that the internal security guards in prisons should carry only "non-offensive" weapons, that is to say they will use instruments, methods and tactics similar to those used in the first stage of street demonstration control, for example visored helmets and shields, protective jackets, masks and rifles firing plastic pellets;

(b) The prison authorities are aware that drug abuse and trafficking are universal problems that have highly adverse effects on discipline and order within prisons and undermine rehabilitation programmes, and they have paid particular attention to controlling them. In order to identify and catch traffickers and their accomplices in the act of bringing drugs into prisons, the Ministry of Justice has devised a preventive search and control programme, tightening procedures for searching the person, clothing and other belongings of those wishing to enter prison premises as visitors, particularly visitors and officials who are suspected of being traffickers or couriers. As part of this policy, and in order to avoid abuses, or protests over the way inspectors and supervisory officials deal with visitors, the Ministry of Justice has drawn up detailed instructions regulating visitor search procedures, in accordance with legal standards and always respecting human dignity;

(c) A national campaign for disarmament in prisons is also under way. The confiscation of weapons and other banned objects in inmates' possession reduces the risk of violence and helps to maintain order. In the implementation of this campaign, joint actions have been planned by the

Ministry of Justice and the national armed forces, whose officers carry out coordinated surprise operations in order to avoid the risk of information leaks, without excessive preparation or mass deployments, seeking effectiveness rather than sensationalism;

(d) Prison staff have paid particular heed to the most pressing demands of inmates by implementing assistance programmes, which have proved the most effective means of reducing protest and providing some relief for the always difficult conditions of deprivation of liberty. The programmes involve psychological aid- services, legal aid services, social welfare services, chaplaincy, sports services and educational services.

The problem of prolonged pre-trial detention and its connection with torture

112. The Special Rapporteur also drew attention in his report to the length of pre-trial detention and its direct relationship with the risk of torture. In paragraph 85 (a) of the report, he recommends that "the period of time in which detained persons are to be brought before a judge should be reduced from eight to no more than four days".

113. In Venezuela, the general principle of freedom is established in article 43 of the Constitution, and the right to liberty and security of person is established in article 60, paragraph 1, which states that liberty and security of person are inviolable, and consequently no one may be arrested or detained, unless caught in flagrante, except by virtue of a written warrant of an official authorized to order the detention, in the cases and with the formalities prescribed by law.

114. Under the Penal Code, a penalty of between 45 days' and 3 years' imprisonment may be imposed on a public official who abuses his powers or violates the conditions or formalities prescribed by law in depriving a person of his liberty. This penalty is increased from three to five years' imprisonment if the public official does so by means of threats, violence or other unlawful coercion and compels another person to carry out or tolerate an act he is not obliged to perform by law or prevents him from performing an action that is not prohibited by law.

115. The law provides that, in the event that a punishable act has been committed, the police authorities may adopt provisional measures of necessity or urgency, indispensable to ensure investigation of the act and trial of the defendants. The law shall fix a brief and peremptory time-limit by which the judicial authorities must be notified of such measures, and shall also establish the period within which the latter shall rule on them, it being understood that they have been revoked and are without effect unless confirmed within that period.

116. The time-limit established in law for police authorities who have placed a suspect in pre-trial detention to bring him before the relevant court is eight days from the date of arrest (art. 75-H) of the current Code of Criminal Procedure). They shall also hand over to the court any documents relating to the preliminary investigations and any instruments, weapons or effects that have been secured for the purposes of the pre-trial proceedings. The

examining court must take a decision on detention within 96 hours, unless, as in serious and complex cases, it requests a longer period, which shall not, however, exceed eight days.

117. Notwithstanding these legal provisions, it is relatively common for the police to arrest people without justification, particularly if an offence has been committed and the perpetrators have not been identified, and even if no actionable offence has been committed but the police regard someone as "suspicious". Unjustified arrests also occur during "raids", i.e. pre-emptive operations in high crime areas, particularly at night in densely populated zones such as the slums of large cities. Human rights activists and NGOs in general have frequently complained that these raids constitute serious abuses on the part of the police, in violation of constitutional provisions and the human rights established in international instruments. Efforts are being made to prevent the security forces from continuing such operations, which not only violate human rights but have also proved ineffective in the fight against crime.

118. The general principle of freedom established in article 60 of the Constitution has been devalued by the interpretation placed on it by the police, namely that, during the eight-day maximum period of pre-trial detention, any person may be detained in order to help with the investigation of an offence. The police interpret the time-limit as an authorization to hold a person for the full eight days, regardless of any change that might occur during that period in the circumstances which originally justified that measure. There is no consistent interpretation of the rule on the part of law enforcement officials. In many cases, they detain a person for eight days not in order to carry out the requisite investigations but as a punishment, which distorts the purpose of pre-trial detention.

119. Under current Venezuelan law, this eight-day pre-trial detention is intended as an exceptional measure and is justified in cases where there is sufficient evidence that an individual was involved in the perpetration of an offence carrying a prison sentence, and circumstances give reason to believe that the suspect will slip out of the investigators' hands, or else it is feared that he will impede the investigation by destroying potentially useful material evidence. It should be added that, according to article 60, paragraph 1, third subparagraph, of the Constitution, this step may only be taken in cases of "necessity or urgency" and when it is "indispensable".

120. In this area, too, the police are being given training and instruction in order to put a stop to this reprehensible practice. The Public Prosecutor's Office has continued its attempts to limit violations of the right to liberty occasioned by this interpretation on the part of the members of the security forces. The Public Prosecutor's Office has instructed its officials to check every case in order to determine whether or not pre-trial detention is imposed in accordance with current legislation, the aim being to put an end to arbitrary detentions.

121. Correcting such abuses is not always easy, particularly in societies plagued by high crime rates. Arbitrary detention is on the increase and is even applauded by ordinary citizens, especially when crime leads to social unrest. At such times, the police arrest large numbers of people without

having any real grounds, evidence or suspects. In reality, police actions of this kind have other purposes. Many of them are shows of force or bravado, representing a response to society's expectations, rather than serious preventive operations or criminal investigations.

122. Protests by NGOs and other human rights activists, and the steps taken by government procurators to combat police abuses are regarded by the police, and even by broad sectors of public opinion, as connivance in crime or signs of weakness. It is therefore also important to try to promote human rights within the culture as a whole. Such a campaign should be based on the idea that, in a democratic State subject to the rule of law, there should be no contradiction between policy on crime and human rights. The requirement to uphold the law and to do everything necessary to ensure the success of a criminal investigation is perfectly compatible with the rights and guarantees granted to citizens under the Constitution, the law and international human rights treaties.

123. Another form of arbitrary detention occurs when the police fail to report the arrest. This is known as retención ("holding") or unreported detention. The Public Prosecutor's Office also intervenes in many situations of this kind, using its powers under article 60, paragraph 1, of the Public Prosecutor's Office (Organization) Act, "to investigate arbitrary detentions and take steps to put a stop to them ...".

124. As mentioned above, the entry into force of the new Code of Penal Procedure will cushion the negative effects of arbitrary detention and reduce the risk of torture implied by the excessive period of pre-trial detention, which, under the new Code, will be reduced to a maximum of 48 hours.

Annexes*

1. Comments by the Government of Venezuela on the recommendations of the Special Rapporteur on torture, Mr. Nigel Rodley.

2. Code of Penal Procedure (official edition, decision No. 003).

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* The annexes are available for consultation in the files of the Office of the United Nations High Commissioner for Human Rights.